

(4)  
No. 84-498

Office - Supreme Court, U.S.

FILED

FEB 14 1985

ALEXANDER L. STEVENS  
CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, PETITIONER

*v.*

NATIONAL BANK OF COMMERCE

ON WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

TERRY F. WYNNE, ESQUIRE  
*Bridges, Young, Matthews,  
Holmes & Drake  
315 East Eighth Avenue  
P.O. Box 7808  
Pine Bluff, Arkansas 71611  
(501) 534-5532  
Counsel for Respondent*

REX E. LEE  
*Solicitor General  
Department of Justice  
Washington, D.C. 20530  
(202) 633-2217  
Counsel for Petitioner*

PETITION FOR WRIT OF CERTIORARI  
FILED SEPTEMBER 27, 1984  
CERTIORARI GRANTED JANUARY 7, 1985

29

## TABLE OF CONTENTS\*

	Page
1. District court docket entries	1
2. Court of appeals docket entries	3
3. Complaint	6
4. Answer	9
5. Stipulation of facts	11
6. Stipulation to amend complaint	13
7. Amended complaint	14
8. Answer to amended complaint	16
9. Supplement to stipulation of facts	17
10. Defendant's motion to dismiss	18
11. Defendant's motion for summary judgment	19
12. Plaintiff's motion for summary judgment	21
13. Defendant's response to plaintiff's motion for summary judgment	22
14. District court judgment	25
15. Notice of appeal	26
16. Order granting certiorari	27

---

\*The opinion and judgment of the court of appeals, and the memorandum of the district court, are printed in the appendix to the petition for writ of certiorari and have not been reproduced here.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKASAS  
PINE BLUFF DIVISION

---

No. PB-C-81-340

---

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL BANK OF COMMERCE, DEFENDANT

---

**RELEVANT DOCKET ENTRIES**

---

9/28/81	COMPLAINT—summons issued in L.R., handed atty for service.
10/16/81	ANSWER
11/6/81	AFFIDAVIT of Service of summons exec on deft. 9/29/81.
8/13/82	STIPULATION of Facts by Parties.
"	STIPULATION to Amend Complaint to Dis- miss w/o prejudice Count II.
"	AMENDED COMPLAINT.
"	ANSWER to Amended Complaint.
11/3/82	SUPPLEMENT to Stipulation of Facts by par- ties.
11/19/82	MOTION for S/J by Deft. (12/16/82)
"	BRIEF in Support of Motion for S/J
"	MOTION to Dismiss by Deft. (12/16/82)
"	BRIEF in Support of Motion to Dismiss.
11/26/82	MOTION for S/J by Pltf. (12/16/82)
"	MEMORANDUM in Support of Motion.
12/13/82	RESPONSE to Pltf's Motion for S/J by Deft.
"	MEMORANDUM in Opposition to Deft's Mo- tion to Dismiss and to Deft's Motion for S/J by Pltf.

12/16/82 MEMORANDUM & ORDER (Eisele) that the case is dismissed as premature in order the Gov. an opportunity to obtain the tax funds sought pursuant to § 6331 and in some manner not inconsistent with this opinion. EOD 12/16/82.

" JUDGMENT (Eisele) pursuant to Memo & Order, case is dismissed. EOD 12/16/82.  
2/9/83 NOTICE of Appeal by Pltf.

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No. 83-1218

UNITED STATES OF AMERICA, APPELLANT

v.

NATIONAL BANK OF COMMERCE, APPELLEE

RELEVANT DOCKET ENTRIES

1983  
Feb. 15 Docketed Case  
" " Certified copies of notice of appeal docket entries; judgment and memorandum & order rec'd from District Court. (1)  
" " TO SETTLEMENT CONFERENCE  
Feb. 15 BRIEFING SCHEDULE: Aplnt DR 2/25/83; Aplee DR 3/7/83; Clerk's Record 3/28/83; OR appndx 3/28/83; Transcript 3/17/83; Brf. Aplnt 3/28/83; Brf. Aplee 4/27/83.  
Feb. 25 APPEARANCE for appellee. (2)  
Feb. 28 APPEARANCE for appellant (3)  
Feb. 28 Received appellant's designation of record.  
Mar. 28 MOTION aplnt ext of time to file brf.—ORDER: Motion granted to April 4, 1983, on 3/29/83w. (4)mm  
Apr. 18 BRIEF APPELLANT: w/ser 4/14 7 copies w/appendix (5)cj  
Apr. 18 APPEARANCE for appellants (6)  
May 16 MOTION APLEE ext of time to file brf.—ORDER: Motion granted to June 1, 1983, on May 16, 1983.w. (7)mm  
June 2 BRIEF Appellee w/ser. 6/1 7 copies. (8)rh  
June 3 TO SCREENING w. 20 min.  
June 23 REPLY BRf APLNT w/ser 7 copies (9)mm  
Jul 26 Transferred to September session.

Sept 15 ARGUED AND SUBMITTED IN ST. LOUIS  
to Judges Bright, Arnold, and Fagg. Mr.  
John Dudeck, Jr. (Justice Dept) for appel-  
lant; Mr. Terry F. Wynne for appellee. Re-  
buttal by Mr. Dudeck, Jr. Recorded.

Sept. 26 RECEIVED additional authority from Govt.  
per Court's request. (to court) (10)

1984

Jan. 4 Received additional citations from counsel for  
appellant. (to court)

Jan. 31 OPINION by Arnold PUBLISHED (11)m

Jan. 31 JUDGMENT: Judgment of Dist. Ct. affirmed  
in accordance with opinion (12)

Feb. 13 APPELLANT'S MOTION for extension of  
time for filing petition for rehearing with  
suggestion for rehearing en banc  
w/service. (13)

Feb. 24 ORDER: Motion appellant for ext. of time to  
file petition for rehearing or rehearing en  
banc is granted to and including 3/15/84. (14)

Mar. 15 PETITION APPELLANT FOR REHEAR-  
ING WITH SUGGESTION FOR REHEAR-  
ING EN BANC. w/service. (15)

Apr. 30 ORDER: The Court, having considered appel-  
lant's petition for rehearing with suggestion  
for rehearing en banc and being now fully ad-  
vised in the premises, hereby orders the peti-  
tion for rehearing with suggestion for rehear-  
ing en banc denied. (16)

May 11 MANDATE ISSUED.

May 16 RECEIPT FOR MANDATE. (17)

July 30 LETTER indicating that extension of time to  
file petition for writ of certiorari was granted  
to and including September 27, 1984. (18)cg

Oct. 15 NOTICE OF FILING of petition for writ of  
certiorari to Supreme Court as Case No.  
84-498, dated September 27, 1984. (19)cg

1985

Jan. 10

CERTIFIED COPY OF ORDER of Supreme  
Court granting certiorari in Case No. 84-498,  
dated January 7, 1985. (20)cg



IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT  
\_\_\_\_\_

**COMPLAINT**

The United States of America, by and through its attorney, George W. Proctor, United States Attorney for the Eastern District of Arkansas, complains of the defendant as follows:

1. This is a civil action arising under the internal revenue laws and brought by the United States of America pursuant to Sections 7402 and 7403 of the Internal Revenue Code of 1954 (26 U.S.C.) and Sections 1340 and 1345 of Title 28, United States Code.

2. This action is authorized and sanctioned by the Chief Counsel, Internal Revenue Service, the duly authorized delegate of the Secretary of the Treasury, and is brought at the direction of the Attorney General of the United States, pursuant to Section 7401 of the Internal Revenue Code.

3. The defendant, National Bank of Commerce, is an Arkansas corporation with its principal place of business at 120 West 5th Street, Pine Bluff, Arkansas, and is within the jurisdiction of this Court.

**COUNT I**

4. On December 10, 1979 a delegate of the Secretary of the Treasury assessed against Roy J. Reeves income taxes, penalties and interest for the year 1977 in the total amount of \$3,607.45. As the result of payments and credits, there is presently due and owing on these assessments an unpaid balance of \$856.61.

5. As of June 13, 1980 there was on deposit with the defendant the sum of \$321.66 in a checking account styled in the name of "Roy or Ruby or Neva R. Reeves." On the same date there was also on deposit with the defendant the sum of \$1,241.60 in a savings account styled in the name of "Roy or Ruby or Neva R. Reeves."

6. On June 13, 1980 a Notice of Levy was served on the defendant pursuant to Section 6331 of the Internal Revenue Code demanding that the defendant pay over to the United States all sums which the defendant owed to Roy J. Reeves up to a total of \$1,302.56. On June 26, 1980 a partial release of levy was issued for monies in excess of \$856.61, and on October 10, 1980 a Final Demand was served on the defendant notifying it of its obligation under the Internal Revenue Code to pay over to the United States monies owed to Roy J. Reeves.

7. The defendant has refused to pay over to the United States the monies which were levied upon and such refusal continues to the present day.

8. Pursuant to Section 6332(c) of the Internal Revenue Code the defendant is liable to the United States in the amount of \$856.61 plus a penalty of \$428.30 for its refusal to surrender the property levied upon.

**COUNT II**

9. On May 19, 1980 a delegate of the Secretary of the Treasury assessed against Charlie M. Henderson income taxes, penalties and interest for the year 1979 in the total amount of \$2,449.51. As the result of payments and credits, there is presently due and owing on these assessments an unpaid balance of \$1,031.51.

10. As of October 3, 1980 there was on deposit with the defendant the sum of \$281.20 in a checking account styled in the name of "Charlie Mae Henderson or (illegible)."

11. On October 3, 1980 a Notice of Levy was served on the defendant pursuant to Section 6331 of the Internal Revenue Code demanding that the defendant pay over to the United States all sums which the defendant owed to Charlie M. Henderson up to a total of \$1,095.99. On October 10, 1980 a Final Demand was served on the defendant notifying

it of its obligation under the Internal Revenue Code to pay over to the United States monies owed to Charlie M. Henderson.

12. The defendant has refused to pay over to the United States the monies which were levied upon and such refusal continues to the present day.

13. Pursuant to Section 6332(c) of the Internal Revenue Code the defendant is liable to the United States in the amount of \$281.20 plus a penalty of \$140.60 for its refusal to surrender the property levied upon.

WHEREFORE, the plaintiff United States of America prays for judgment against the defendant in the amount of \$1,706.71 plus interest thereon according to law, for its costs, and for such other and further relief as this Court deems just and proper.

GEORGE W. PROCTOR  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE SHERLOCK  
Attorney, Tax Division  
Department of Justice  
Washington, D.C. 20530

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL BANK OF COMMERCE, DEFENDANT  
\_\_\_\_\_

ANSWER

Comes the defendant, National Bank of Commerce of Pine Bluff, and for its Answer to the Complaint filed herein states:

1. Paragraph 1 of the Complaint states conclusions of law and does not require an admission or denial.

2. The defendant is without knowledge concerning the allegations of paragraph 2 of the Complaint and therefore denies same.

3. The allegations of paragraph 3 of the Complaint are admitted.

4. Defendant is without knowledge concerning the allegations of paragraph 4 of the Complaint and therefore denies same.

5. Defendant admits that as of June 13, 1980, it had a checking account and a savings account in the names of Roy Reeves or Ruby Reeves or Neva R. Reeves with a total balance in the two accounts in excess of \$856.61. Any one of said parties was authorized to make withdrawals. Defendant does not know which of said parties was the owner of the funds in said accounts.

6. The allegations of paragraph 6 of the Complaint are admitted.

7. The allegations of paragraph 7 of the Complaint are admitted.

8. Defendant denies the allegations of paragraph 8 of the Complaint.

9. Defendant is without knowledge concerning the allegations of paragraph 9 of the Complaint and therefore denies same.

10. As of October 3, 1980, there was on deposit with the defendant checking account 511-210-9 with a balance of \$281.20 in the name of Charlie Mae Henderson or Linda M. Shovan, 2600 North Hutchinson Street, Pine Bluff, Arkansas. Either of said parties was authorized to make withdrawals from said account. Defendant does not know whether the funds in this account belonged to Charlie Mae Henderson or to Linda M. Shovan, or partly to one of said parties and partly to the other.

11. The allegations of paragraph 11 of the Complaint are admitted.

12. The allegations of paragraph 12 of the Complaint are admitted.

13. The allegations of paragraph 13 of the Complaint are denied.

14. Defendant denies each and every material allegation of the Complaint not hereinabove specifically admitted.

15. Defendant reserves the right to file amended, modified, supplemental and additional pleadings herein following additional investigation of matters alleged in the Complaint.

WHEREFORE, defendant prays that the Complaint filed herein be dismissed at the cost of the plaintiff and for all other proper relief.

BRIDGES, YOUNG, MATTHEWS,  
HOLMES & DRAKE  
Post Office Box 7808  
Pine Bluff, Arkansas 71611

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

No. PB-C-81-340

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL BANK OF COMMERCE, DEFENDANT

STIPULATION OF FACTS

The parties hereto, by and through their respective counsel, stipulate and agree that the following facts, conclusions of law and other matters contained herein are true:

1. This is a civil action arising under the internal revenue laws and this Court has jurisdiction of the matter pursuant to Sections 7402 and 7403 of the Internal Revenue Code of 1954 (26 U.S.C.) and Section 1340 and 1345 of Title 28, United States Code.

2. This action is authorized and sanctioned by the Chief Counsel, Internal Revenue Service, the duly authorized delegate of the Secretary of the Treasury, and is brought at the direction of the Attorney General of the United States, pursuant to Section 7401 of the Internal Revenue Code.

3. The defendant, National Bank of Commerce, is an Arkansas corporation with its principal place of business at 120 West 5th Street, Pine Bluff, Arkansas, and is within the jurisdiction of this Court.

4. On December 10, 1979 a delegate of the Secretary of the Treasury assessed against Roy J. Reeves income taxes, penalties and interest for the year 1977 in the total amount of \$3,607.45. As the result of payments and credits, there is presently due and owing on these assessments an unpaid balance of \$856.61.

5. As of June 13, 1980 there was on deposit with the defendant the sum of \$321.66 in a checking account styled in the name of "Roy Reeves or Ruby Reeves or Neva R.



Reeves." On the same date there was also on deposit with the defendant the sum of \$1,241.60 in a savings account styled in the name of "Roy Reeves or Ruby Reeves or Neva R. Reeves."

6. Any one of the three parties, Roy Reeves, Ruby Reeves or Neva R. Reeves, was authorized to make withdrawals from the above accounts. The defendant does not know which of the three parties was the owner of the funds prior to their deposit in the accounts.

7. On June 13, 1980 a Notice of Levy was served on the defendant pursuant to Section 6331 of the Internal Revenue Code demanding that the defendant pay over to the United States all sums which the defendant owed to Roy J. Reeves up to a total of \$1,302.56. On June 26, 1980 a partial release of levy was issued for monies in excess of \$856.61, and on October 10, 1980 a Final Demand was served on the defendant notifying it of its obligation under the Internal Revenue Code to pay over to the United States monies owed to Roy J. Reeves.

8. The defendant has refused to pay over to the United States the monies which were levied upon and such refusal continues to the present day.

GEORGE W. PROCTOR  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE SHERLOCK  
Attorney, Tax Division  
Department of Justice  
Washington, D.C. 20530  
Attorney for Plaintiff

By: \_\_\_\_\_  
• TERRY F. WYNNE  
BRIDGES, YOUNG, MATTHEW,  
HOLMES AND DRAKE  
P.O. Box 7808  
Pine Bluff, Arkansas 71611  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL BANK OF COMMERCE, DEFENDANT

\_\_\_\_\_  
STIPULATION TO AMEND COMPLAINT

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the parties to this action hereby stipulate that the Complaint be amended in the following respects:

1. Count II of the original Complaint shall be dismissed without prejudice;

2. The plaintiff shall waive any claim to the penalty provided by Section 6332(c)(2) of the Internal Revenue Code. Accordingly, the parties stipulate that the Amended Complaint attached hereto be filed with the Court.

GEORGE W. PROCTOR  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE SHERLOCK  
Attorney, Tax Division  
Department of Justice  
Washington, D.C. 20530  
Attorney for Plaintiff

\_\_\_\_\_  
TERRY F. WYNNE  
Bridges, Young, Matthew,  
Holmes and Drake  
P.O. Box 7808  
Pine Bluff, Arkansas 71611  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL BANK OF COMMERCE, DEFENDANT  
\_\_\_\_\_

**AMENDED COMPLAINT**

The United States of America, by and through its attorney, George W. Proctor, United States Attorney for the Eastern District of Arkansas, complains of the defendant as follows:

1. This is a civil action arising under the internal revenue laws and brought by the United States of America pursuant to Sections 7402 and 7403 of the Internal Revenue Code of 1954 (26 U.S.C.) and Sections 1340 and 1345 of Title 28, United States Code.

2. This action is authorized and sanctioned by the Chief Counsel, Internal Revenue Service, the duly authorized delegate of the Secretary of the Treasury, and is brought at the direction of the Attorney General of the United States, pursuant to Section 7401 of the Internal Revenue Code.

3. The defendant, National Bank of Commerce, is an Arkansas corporation with its principal place of business at 120 West 5th Street, Pine Bluff, Arkansas, and is within the jurisdiction of this Court.

4. On December 10, 1979 a delegate of the Secretary of the Treasury assessed against Roy J. Reeves income taxes, penalties and interest for the year 1977 in the total amount of \$3,607.45. As the result of payments and credits, there is presently due and owing on these assessments an unpaid balance of \$856.61.

5. As of June 13, 1980 there was on deposit with the defendant the sum of \$321.66 in a checking account styled in

the name of "Roy Reeves or Ruby Reeves or Neva R. Reeves." On the same date there was also on deposit with the defendant the sum of \$1,241.60 in a savings account styled in the name of "Roy Reeves or Ruby Reeves or Neva R. Reeves."

6. On June 13, 1980 a Notice of Levy was served on the defendant pursuant to Section 6331 of the Internal Revenue Code demanding that the defendant pay over to the United States all sums which the defendant owed to Roy J. Reeves up to a total of \$1,302.56. On June 25, 1980 a partial release of levy was issued for monies in excess of \$856.61, and on October 10, 1980 a Final Demand was served on the defendant notifying it of its obligation under the Internal Revenue Code to pay over to the United States monies owed to Roy J. Reeves.

7. The defendant has refused to pay over to the United States the monies which were levied upon and such refusal continues to the present day.

8. Pursuant to Section 6332(c) of the Internal Revenue Code the defendant is liable to the United States in the amount of \$856.61 for its refusal to surrender the property levied upon.

WHEREFORE, the plaintiff United States of America prays for judgment against the defendant in the amount of \$856.61 plus interest thereon according to law, for its costs, and for such other and further relief as this Court deems just and proper.

GEORGE W. PROCTOR  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE SHERLOCK  
Attorney, Tax Division  
Department of Justice  
Washington, D.C. 20530

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT

**ANSWER TO AMENDED COMPLAINT**

Comes the Defendant, National Bank of Commerce of Pine Bluff, by its attorneys, Bridges, Young, Matthews, Holmes & Drake, and for its Answer to the Amended Complaint, states:

1. That it admits the allegations of paragraphs 1 through 7 of Plaintiff's Amended Complaint, but generally and specifically denies each and every other allegation of said Complaint.

WHEREFORE, the Defendant, National Bank of Commerce of Pine Bluff, prays that the Complaint and Amended Complaint filed herein be denied and dismissed and that Plaintiff take nothing thereby; for its costs herein and all other proper and legal relief.

BRIDGES, YOUNG, MATTHEWS,  
HOLMES & DRAKE  
P.O. Box 7808  
Pine Bluff, Arkansas 71611

By: \_\_\_\_\_  
TERRY F. WYNNE  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT

**SUPPLEMENT TO STIPULATION OF FACTS**

In addition to the matters previously stipulated, the parties hereto, by and through their respective counsel, stipulate and agree as follows:

1. No further evidence as to the ownership of the monies in the subject bank accounts will be submitted.

GEORGE W. PROCTOR  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE SHERLOCK  
Attorney, Tax Division  
Department of Justice  
Washington, D.C. 20530  
Attorney for Plaintiff

\_\_\_\_\_  
TERRY F. WYNNE  
BRIDGES, YOUNG, MATTHEWS,  
HOLMES & DRAKE  
P.O. Box 7808  
Pine Bluff, Arkansas 71611  
Attorneys for Defendant



IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT

**ANSWER TO AMENDED COMPLAINT**

Comes the Defendant, National Bank of Commerce of Pine Bluff, by its attorneys, Bridges, Young, Matthews, Holmes & Drake, and for its Answer to the Amended Complaint, states:

1. That it admits the allegations of paragraphs 1 through 7 of Plaintiff's Amended Complaint, but generally and specifically denies each and every other allegation of said Complaint.

WHEREFORE, the Defendant, National Bank of Commerce of Pine Bluff, prays that the Complaint and Amended Complaint filed herein be denied and dismissed and that Plaintiff take nothing thereby; for its costs herein and all other proper and legal relief.

BRIDGES, YOUNG, MATTHEWS,  
HOLMES & DRAKE  
P.O. Box 7808  
Pine Bluff, Arkansas 71611

By: \_\_\_\_\_  
TERRY F. WYNNE  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT

**SUPPLEMENT TO STIPULATION OF FACTS**

In addition to the matters previously stipulated, the parties hereto, by and through their respective counsel, stipulate and agree as follows:

1. No further evidence as to the ownership of the monies in the subject bank accounts will be submitted.

GEORGE W. PROCTOR  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE SHERLOCK  
Attorney, Tax Division  
Department of Justice  
Washington, D.C. 20530  
Attorney for Plaintiff

\_\_\_\_\_  
TERRY F. WYNNE  
BRIDGES, YOUNG, MATTHEWS,  
HOLMES & DRAKE  
P.O. Box 7808  
Pine Bluff, Arkansas 71611  
Attorneys for Defendant



IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

No. PB-C-81-340

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT

**DEFENDANT'S MOTION TO DISMISS**

Comes the Defendant, National Bank of Commerce of Pine Bluff, by its attorneys, Bridges, Young, Matthews, Holmes & Drake, and for its Motion to Dismiss pursuant to Rule 19 of the Federal Rules of Civil Procedure states:

1. That Rule 19 of the Federal Rules of Civil Procedure requires a party to be joined if a final Decree cannot be made without either affecting that interest, or leaving the controversy in such condition that its final termination may be wholly inconsistent with equity and good conscience.

2. The interest of a co-depositor in a joint bank account is an interest which requires the co-depositors to be joined to afford complete relief in this action and makes those persons indispensable to this action.

3. Said joint depositors have not been joined in this action and it must therefore be dismissed.

WHEREFORE, Defendant, National Bank of Commerce of Pine Bluff, prays that this Motion to Dismiss be granted and that this case be dismissed; for its costs expended; and for all reasonable attorneys' fees.

BRIDGES, YOUNG, MATTHEWS,  
HOLMES & DRAKE  
P.O. Box 7808  
Pine Bluff, Arkansas 71611

By: \_\_\_\_\_  
TERRY F. WYNNE  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

No. PB-C-81-340

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Comes the Defendant, National Bank of Commerce of Pine Bluff, by its attorneys, Bridges, Young, Matthews, Holmes & Drake, and for its Motion for Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, states:

1. That pursuant to Stipulations, Amended Complaint and Answer to Amended Complaint filed herein, there exists no genuine issues as to any material fact and the Defendant is entitled to judgment in its favor as a matter of law.

2. The Plaintiff seeks judgment against the Defendant in the amount of \$856.61 based on a levy made by the Plaintiff on a joint bank account in the names of Roy Reeves, Ruby Reeves and Neva R. Reeves in the possession of the Defendant.

3. Defendant refused to turn over money in the joint account of Roy Reeves, Ruby Reeves and Neva R. Reeves, because Plaintiff has failed to provide proof of the actual ownership interest of Roy Reeves and the sums on deposit with it. Plaintiff has also stipulated that no further proof of ownership of the monies contained in the accounts will be presented.

4. The Plaintiff is only entitled to recover from the Defendant those sums actually owned by Roy Reeves, and the Plaintiff has failed to provide proof of the amount of Mr. Reeves' ownership interest in this account.

5. Defendant is therefore entitled to judgment as a matter of law.

WHEREFORE, the Defendant, National Bank of Commerce of Pine Bluff, prays that summary judgment be granted in its favor and that judgment be entered in its favor; for its costs expended and reasonable attorneys' fees.

BRIDGES, YOUNG, MATTHEWS,  
HOLMES & DRAKE  
P.O. Box 7808  
Pine Bluff, Arkansas 71611

BY: \_\_\_\_\_  
TERRY F. WYNNE  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the plaintiff, United States of America, moves the Court to enter an Order granting summary judgment in favor of the plaintiff and against the defendant.

As grounds for this motion, the plaintiff would show that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law.

In support of its motion, the plaintiff relies on the Amended Complaint, the Answer to Amended Complaint, the Stipulation of Facts and the Memorandum of Law which is attached hereto and made a part hereof.

Respectfully submitted.

GEORGE W. PROCTOR  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE SHERLOCK  
Attorney, Tax Division  
Department of Justice  
Washington, D.C. 20530

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

---

No. PB-C-81-340

---

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL BANK OF COMMERCE, DEFENDANT

---

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Comes the Defendant, National Bank of Commerce of Pine Bluff, by its attorneys, Bridges, Young, Matthews, Holmes & Drake, and for its Response to Plaintiff's Motion for Summary Judgment and Memorandum of Law in support of same, states:

1. That the facts herein have been stipulated by the parties and those stipulations have been filed with this Court. In addition to the stipulations set out by the Plaintiff in its Motion, the parties also stipulated that "No further evidence as to the ownership of the monies in the subject bank accounts will be submitted."

2. While there is no genuine issue of fact, Plaintiff is not entitled to judgment. However, Defendant is entitled to summary judgment on its own Motion filed herein and/or dismissal pursuant to its Motion to Dismiss also filed herein.

3. As Plaintiff states in its brief on page 2: "Neither party to this action has any knowledge as to the ownership of the funds prior to the deposit in the accounts, and no evidence is before the Court on that point." Plaintiff also properly notes that "whether or not a particular item is property or rights to property of the taxpayer is a question of State law." (Page 3 of Plaintiff's Memorandum). And as Plaintiff notes *Hayden v. Gardner*, 238 Ark. 351 (1964) states that a "joint account should be garnishable in the

proportion of the debtor's ownership of the funds". Plaintiff then states on page 4: "Once it is established under State law that the taxpayer has a right to particular property, Federal law determines whether the person in possession of such property is obligated to surrender the property." This is where Plaintiff's argument fails. It is stipulated by the parties that it is unknown which of the three parties on the bank account is the owner of the funds in it and is further stipulated that no evidence as to the ownership will be submitted in this case. Therefore, it has not been "established under State law that the taxpayer has a right to particular property". We do not know if the tax debtor owns all, none or some part of the deposits, and, since only property owned by the tax debtor is subject to levy, the Defendant cannot unilaterally turn over the deposits to Plaintiff without proof of their ownership. Obviously, it is the Plaintiff's burden to establish that the taxpayer has a right to the deposits in this case before the Defendant would be required to turn them over to the Plaintiff.

4. Plaintiff argues that the *Hayden* case places the burden on each joint depositor to show what portion of the funds he or she owns. This again points out the fallacy of Plaintiff's argument. Plaintiff has failed to join the co-depositors in its levy or this action so there is no possible way for them to establish what portion of the funds each owns. Plaintiff asserts that this is not fatal because the joint depositors possess a remedy under the Internal Revenue Code which would permit them to bring an action against the United States to recover any funds which belong to him. This argument totally ignores 26 U.S.C. § 7403(b) which provides: "All persons having liens upon or claiming any interest in the property involved in such actions (i.e. levy) shall be made parties thereto." Further, this argument would do nothing more than create a multiplicity of legal actions which could be avoided simply by the Plaintiff joining all parties to the account in its levy. This argument also disregards the fact that the co-depositors would likely file suit against the Bank also because it turned over funds of the co-depositors without ascertaining the respective interests of the depositors.



5. On page 5 of its brief, the Plaintiff finally states that the point of this action is that a Bank cannot refuse to honor a levy on a joint bank account simply because the taxpayer is only one of the depositors. It then states that the taxpayer clearly had an interest in the property. However, on the contrary, it has not been clearly established that the taxpayer has an interest in this joint account. Had Plaintiff joined the co-depositors as is required by *Hayden v. Gardner*, it may have been determined that the co-depositors were the sole owners of the monies on deposit with the Bank. However, Plaintiff has refused to join those persons and has stipulated that it will submit no evidence in this action as to the ownership interests involved in this account. Therefore, it has not been and cannot be established that the taxpayer has any ownership of the funds on deposit with the Defendant and therefore the Bank cannot be liable to the Plaintiff for refusing to turn over those deposits.

6. The real point of this case is that the Internal Revenue Service cannot require the Defendant to turn over all of the funds in a joint account in its possession without establishing the relative ownership interests of the parties to that account. The law requires the Plaintiff to establish the ownership interests of its tax debtor and it has failed to do so. For these reasons, Plaintiff's Motion should be denied and Defendant's Motion should be granted.

WHEREFORE, Defendant, National Bank of Commerce of Pine Bluff, prays that the Motion for Summary Judgment filed herein by Plaintiff be denied and that it take nothing thereby; that its own Motion for Summary Judgment be granted and judgment in its favor entered forthwith; and for all other proper relief.

BRIDGES, YOUNG, MATTHEWS,  
HOLMES & DRAKE  
P.O. Box 7808  
Pine Bluff, Arkansas 71611

By: \_\_\_\_\_  
TERRY F. WYNNE  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

\_\_\_\_\_  
No. PB-C-81-340  
\_\_\_\_\_

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL BANK OF COMMERCE, DEFENDANT

\_\_\_\_\_  
**JUDGMENT**

Pursuant to the Memorandum and Order filed in this matter this date, it is Considered, Ordered and Adjudged that this case be, and it is hereby, dismissed.

Dated this 14th day of December, 1982.

/s/ GARNETT THOMAS EISELE  
\_\_\_\_\_  
United States District Judge



IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

---

No. PB-C-81-340

---

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

NATIONAL BANK OF COMMERCE, DEFENDANT

---

**NOTICE OF APPEAL**

Notice is hereby given that the plaintiff, United States of America, appeals to the United States Court of Appeals for the Eighth Circuit from the Judgment and the Opinion entered in this action on December 14, 1982.

GEORGE W. PROCTOR  
United States Attorney

By: \_\_\_\_\_  
LAWRENCE SHERLOCK  
Attorney, Tax Division  
Department of Justice  
Washington, D.C. 20530

No. 84-498

**Supreme Court of the United States**

---

UNITED STATES OF AMERICA, PETITIONER

*v.*

NATIONAL BANK OF COMMERCE

ORDER ALLOWING CERTIORARI. Filed *January 7, 1985*.

The petition herein for a writ of certiorari to the *United States Court of Appeals for the Eighth Circuit* is granted.